

REMARKS

Claims 3-6 and 9-14 are pending in the application.

Claim 13 is amended to remove the word "*sufficiently*" from the phrase "*said barrel portion (5) is embodied as a second handle grip (9) that is sufficiently insulated from the heater (3) to prevent said second handle grip (9) from getting hot during use.*"

No new matter is added.

Claims Rejections 35 U.S.C. 112

Claims 3-6 and 9-13 are rejected under 35 U.S.C. 112, second paragraph, over the term "*sufficiently*" recited in claim 13. The rejection has been carefully considered. Applicant amends claim 13 to remove the recitation of "*sufficiently*." The limitation of being insulated to prevent the handle grip from getting hot during use as recited in claim 13 is met by every insulation that prevents the handle grip from getting hot during use. Consequently, that the handle grip is "*sufficiently*" insulated is implicit in the recitation even without the recitation of the word "*sufficiently*." The recitation that the handle grip is "*sufficiently*" insulated is therefore not necessary. In view of the amendment to claim 13, Applicant respectfully requests that the rejection of claims 3-6 and 9-13 as being indefinite under 35 U.S.C. 112, second paragraph, be withdrawn.

Claims Rejections 35 U.S.C. 102

Claims 13 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by **Springer** (US 4,232,454). The rejection has been carefully considered.

I A. Applicant argues that claims 13 and 10 are patentable over Springer because Springer does not disclose a dryer that meets the limitation recited in claim 13 of:

a barrel portion (5) containing an electric heater (3) and
said barrel portion (5) is embodied as a second handle grip (9) that is insulated from the heater (3) to prevent said second handle grip (9) from getting hot during use.

said barrel portion (5) is embodied as a second handle grip (9)

Section 2112 IV of the MPEP provides additional guidance regarding the use of inherency to reject claims.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not

sufficient.’ ” In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)

and

“In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) (Applicant’s invention was directed to a biaxially oriented, flexible dilation catheter balloon (a tube which expands upon inflation) used, for example, in clearing the blood vessels of heart patients). The examiner applied a U.S. patent to Schjeldahl which disclosed injection molding a tubular preform and then injecting air into the preform to expand it against a mold (blow molding). The reference did not directly state that the end product balloon was biaxially oriented. It did disclose that the balloon was “formed from a thin flexible inelastic, high tensile strength, biaxially oriented synthetic plastic material.” Id. at 1462 (emphasis in original). The examiner argued that Schjeldahl’s balloon was inherently biaxially oriented. The Board reversed on the basis that the examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.).

The rejection asserts that the barrel portion 110 shown in FIG. 2 of Springer is inherently capable of being used as a second handle grip "*where this language is given little patentable weight because it is functional language and the apparatus claim limitations read on the prior art.*"

Regarding the asserted inherency of the barrel portion 110 in Springer inherently capable of being used as a second handle grip, Applicant respectfully submits that the Examiner has failed to establish the asserted inherency.

FIG. 2 in the Springer patent clearly shows that the barrel 110 portion could not have been used as a handle grip because [1] the barrel portion 110 would have been too hot to hold during use and [2] gripping the barrel portion 110 during use would have interfered with the operation of the dryer described in Springer.

[1] According to the rejection, the barrel portion 110 disclosed in the Springer patent is inherently capable of being used as second handle grip. The rejection cites nothing in the Springer patent in support and provides no factual evidence or argument in support of this conclusory statement. Applicant argues that the Springer patent provides ample evidence in support of Applicant's argument that the barrel portion 110 disclosed by Springer could not reasonably have been used as a handle grip. Initially, Applicant notes that Springer makes no mention whatsoever of gripping the barrel portion 110 of the disclosed hair dryer. The barrel portion 110 disclosed is not of a shape that would have been used as a handle grip. For example, the barrel portion 110 has sharp edges as opposed to rounded edges, its cross-sectional shape would have been difficult to grip, and it is flared. These features all interfere with the basic act of gripping the barrel portion. The barrel portion also contains controls which must be accessible during operation and which would be inaccessible were one to grasp the dryer by barrel portion 110. For example, knob 111 connected to screw 107 for pivoting doors 112 and 113 would be inaccessible if the dryer were gripped by barrel portion 110. The requirement for operating knob 11 during use and the location of the knob near the center of barrel portion 110 are clearly disclosed in Springer in column 4, lines 15-20, and column 3, lines 64-67. Finally, the barrel portion 110 of the Springer dryer would necessarily become hot during use. In response to Applicant's arguments filed 02/09/2011, the Examiner cites Thaler '331 (FIG. 4) and Kaeriyama (FIG. 2) and asserts: "*Similarly, the barrel portion of Springer does inherently have a handle function.*" Thaler '331 and Kaeriyama are not relevant to the rejection under 35 U.S.C. 102(b) argued with respect to Springer. Consequently, the Examiner has not responded to Applicant's arguments regarding inherency asserted for Springer. If the rejection of claim 13 and 10 under 35 U.S.C. 102(b) are maintained, Applicant respectfully requests that the Examiner provide a substantive answer to Applicant's arguments that addresses the specific facts presented to the Examiner for consideration.

Applicant provides specific citations from Springer as facts in support of Applicant's argument against the inherency asserted in the rejection. Applicant respectfully submits that the facts and argument, when considered in view of a lack of factual support to the contrary, show that the Springer dryer does not inherently meet the limitation recited in claim 13 of "said barrel portion (5) is embodied as a second handle grip (9) that is insulated from the heater (3) to prevent said second handle grip (9) from getting hot during use.

a second handle grip (9) that is insulated from the heater (3) to prevent said second handle grip (9) from getting hot during use

[2] According to the rejection, the barrel portion 110 contains an electric heater 116. Neither the electric heater 116, including heating elements 120, nor the hot air flowing through the barrel portion 110 are insulated from exterior surfaces of the barrel portion. Consequently, the barrel portion 110 would be hot during use. In response to this argument, the Examiner asserts that doors 112 and 113 would "**inherently** insulate the barrel portion 110 from the heater to some degree" and that having the "heating elements 120 of the heater 116 spaced from the barrel portion 110" and the thickness of the barrel portion 110 "would also provide an insulating effect."

The Examiner does not cite, and the Springer patent does not disclose, any type of thermal insulation or thermally insulating material on any portion of the dryer. Springer does not disclose, teach, or suggest any means of providing thermal insulation or even an advantage associated with preventing the barrel portion 110 from getting hot during use. No material having a thermal insulating property is mentioned in Springer. The Examiner asserts that insulation is provided by doors 112 and 113 but these doors are not disclosed to have an insulating effect or to be made of an insulating material. Furthermore, the doors 112 and 113 represent only a small portion of the surface of the barrel portion and certainly less than the area that would contact a hand gripping the barrel

portion 110. The Examiner also asserts that the heater 116 is "*spaced apart from the barrel portion 110*," which would mean that the heater 116 is not contained within the barrel portion 110. It is possible that the Examiner means to assert that a distance between the wall of the barrel portion 100 and the heater 116 would provide insulation. Such an assertion would be incorrect because FIG. 2 clearly shows the heater 116 in contact with the barrel wall and FIG. 3 clearly shows heater 116 extending across the entire interior of the non-flared portion of the barrel portion 110. FIGs. 2 and 3 are different views of the same embodiment.

Another way of determining whether the barrel portion of the Springer dryer is inherently insulated is to ask whether one of skill in the art would reasonably use the structure disclosed in Springer to insulate the barrel of a hair dryer to keep it from getting hot during use. The answer to this question is clearly "*no*."

"All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

"Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought." (MPEP 2173.01)

[3] The Examiner asserts "*little patentable weight*" to the limitations regarding "said barrel portion (5) is embodied as a second handle grip (9) that is insulated from the heater (3) to prevent said second handle grip (9) from getting hot during use" because these limitations are "*functional language*." Claim language such as "*thermally insulated*" and "*operatively connected*" are general descriptive terms frequently used in patent drafting to reflect functional relationships between claimed components. (In *Innova/Pure Water Inc. v. Safari Water Filtration Sys. Inc.*, 381 F.3d 1111, 1117-20, 72 USPQ2d 1001, 1006-08 (Fed. Cir. 2004)).

The assignment of "*little patentable weight*" to certain claim limitations in combination with the inherencies asserted for the Springer dryer is confusing. If Springer were, in fact, to anticipate present claims 13 and 10, then the "*patentable weight*" of the limitations recited in the rejected claims would not appear to be a relevant issue. Applicant respectfully requests that the Examiner provide a statutory basis for the assignment of limited patentable weight to certain claim limitations and how it applies in the present instance.

I B. Applicant argues that claims 13 and 10 are patentable over Springer because Springer does not disclose a dryer that meets the limitation recited in claim 13 of:

said cold air combination switch (16, 16.1, 16.2) is configured to be actuated selectively from the first or second handle grip (8, 9), by direct contact between the cold air combination switch and one finger of a hand on either the first handle grip (8) or the second handle grip (9).

The rejection asserts that the cold air combination switch disclosed by Springer is located on the housing portion at the angle formed by the first handle grip and the barrel portion and is configured to be actuated using a single finger of a hand on either the handle grip or the barrel grip. The Examiner qualifies this assertion by indicating that the language in the rejected claim is given little patentable weight and that the operation of the switch using one finger is "*implicit*" (i.e. **inherent**). The Examiner does not support this assertion with any reasoned statement.

Arguments against the asserted inherent disclosure by Springer of a barrel portion embodied as a second handle grip are presented in **I A** above.

Based upon the view shown in Springer below FIG. 2 and labeled FIG. 1, it is not apparent that any of the switches are operable by a single finger of a hand

gripping the dryer by the handle or the barrel. There is no disclosure or suggestion in Springer that any of the switches are actuatable by a single finger.

The response to Applicant's arguments in the Office Action mailed 30 March 2011 does not address the substance of the arguments because it fails to address any of the passages from Thaler '331 that are cited as contradicting the Examiner's interpretation of the '331 disclosure.

In view of the foregoing arguments, Applicant respectfully requests that the rejection of claims 13 and 10 under 35 U.S.C. 102(b) be withdrawn.

Claims Rejections 35 U.S.C. 103

Initially, Applicant respectfully draws the Examiner's attention to the lack of response to any of the substance of the arguments presented in the amendment filed 09 February 2011 against the rejections under 35 U.S.C. 103(a). In his response, the Examiner restates the subject of the argument presented (e.g. Applicant argues that Thaler '331 does not disclose a single cold air combination switch) and follows with a brief repetition or restatement of the original rejection. The Examiner does not address or appear to have considered any of the points of fact raised by Applicant or citations from the cited prior art in support of Applicant's arguments. The MPEP 707.07(e) states:

"Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it."

In the interest of a compact prosecution, Applicant respectfully requests that the Examiner respond to the substance of the arguments presented herein

by addressing the substance of the issues raised, including the substance of the citations from prior art used by Applicant in support of Applicant's arguments.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Springer** (US 4,232,454) in view of **Gallone** (US 5,349,147). The rejection has been carefully considered.

II A. Applicant argues that claim 11 is patentable over the cites prior art because the references, neither alone nor in combination, teach or suggest the limitations of:

said cold air combination switch (16, 16.1, 16.2) is configured to be actuated selectively from the first or second handle grip (8, 9), by direct contact between the cold air combination switch and one finger of a hand on either the first handle grip (8) or the second handle grip (9) or

a barrel portion (5) containing an electric heater (3) [wherein] said barrel portion (5) is embodied as a second handle grip (9) that is insulated from the heater (3) to prevent said second handle grip (9) from getting hot during use.

Springer does not teach or suggest the above limitations at least for reasons set forth in the arguments **I A** through **I C** above. Gallone does not teach or suggest a hair dryer or any of the above limitations.

II B. Applicant argues that claim 11 is patentable over the cites prior art because Gallone does not teach or suggest a cold air combination switch (16.2) that is a two-legged toggle switch. The rejection asserts cites structural element 15 in FIG. 1 of Gallone as a two-legged toggle switch. The description of structural element 15 in FIG. 1 of Gallone indicates that 15 is "*a transmission rod*" (column 3, line 25). Accordingly, Gallone does not teach or suggest a two-legged toggle switch.

II C. Applicant argues that claim 11 is patentable over the cited prior art because one of ordinary skill, at the time the invention was made, would not have been motivated to modify the hair dryer of Springer to include a toggle switch as asserted in the rejection.

Applicant argues that the examiner has not established *prima facie* obviousness for the asserted combination because the factual support for the conclusion of obviousness is lacking or incorrect. The motivation asserted for the combination is not supported by fact and the assertion that Gallone teaches a two-legged toggle switch is not supported by the Gallone patent.

The rejection does not establish a nexus between a hair dryer taught by Springer and the switch taught by Gallone. Rather, the rejection merely presents a conclusory statement of obviousness. The rejection provides no evidence that the switch taught by Gallone is of suitable size or weight for a hand hair dryer or that splashing of water into hand hair dryer switches is an issue to be addressed in hair dryers, which are not typically used in or near water. The much larger issue of an opening drawing air into a housing and blowing heated air out of another opening much larger than the cold air combination switch would, in any event, not be splash proof. No overall advantage would have been gained by making the cold air combination switch splash-proof. Consequently, the reason provided for the asserted combination does not hold water.

Claims 13, 3-6, and 9 rejected under 35 U.S.C. 103(a) as being unpatentable over **Thaler** (US 5,727,331) in view of **Thaler** (US 4,711,988) and **Kaeriyama** (JP 03 009 703 A). The rejection has been carefully considered.

"Office personnel must articulate findings of fact that support the rationale relied upon in an obviousness rejection." (*MPEP 2141, V.*)

Facts established by rebuttal evidence must be evaluated along with the facts on which the conclusion of obviousness was reached,

not against the conclusion itself. In re Eli Lilly & Co., 902 F.2d 943,
14 USPQ2d 1741 (Fed. Cir. 1990). MPEP 2142

III A. Applicant argues that rejected claims are patentable over the cited references because the references, neither alone nor in combination, teach or suggest a single cold air combination switch configured to be actuated selectively from the first or second handle grip by direct contact between switch and one finger of a hand on either the first or second handle grip.

The rejection relies upon Thaler '331 as teaching a dryer comprising a cold air combination switch 120 configured to be actuated selectively from the first or second handle grip by direct contact between switch and one finger of a hand on either the first or second handle grip.

Thaler '331 and the present invention both provide a solution to the ergonomic problem encountered when holding a dryer alternately by the barrel and pistol grip of the dryer during. Unlike the present invention, **the solution provided by Thaler '331 is based upon two cold-air combination switches** or by allowing an operator holding the hair dryer by the barrel to actuate a conventionally placed cold-air combination trigger switch **by way of a second switch mechanically coupled to the trigger switch.** From Thaler '331:

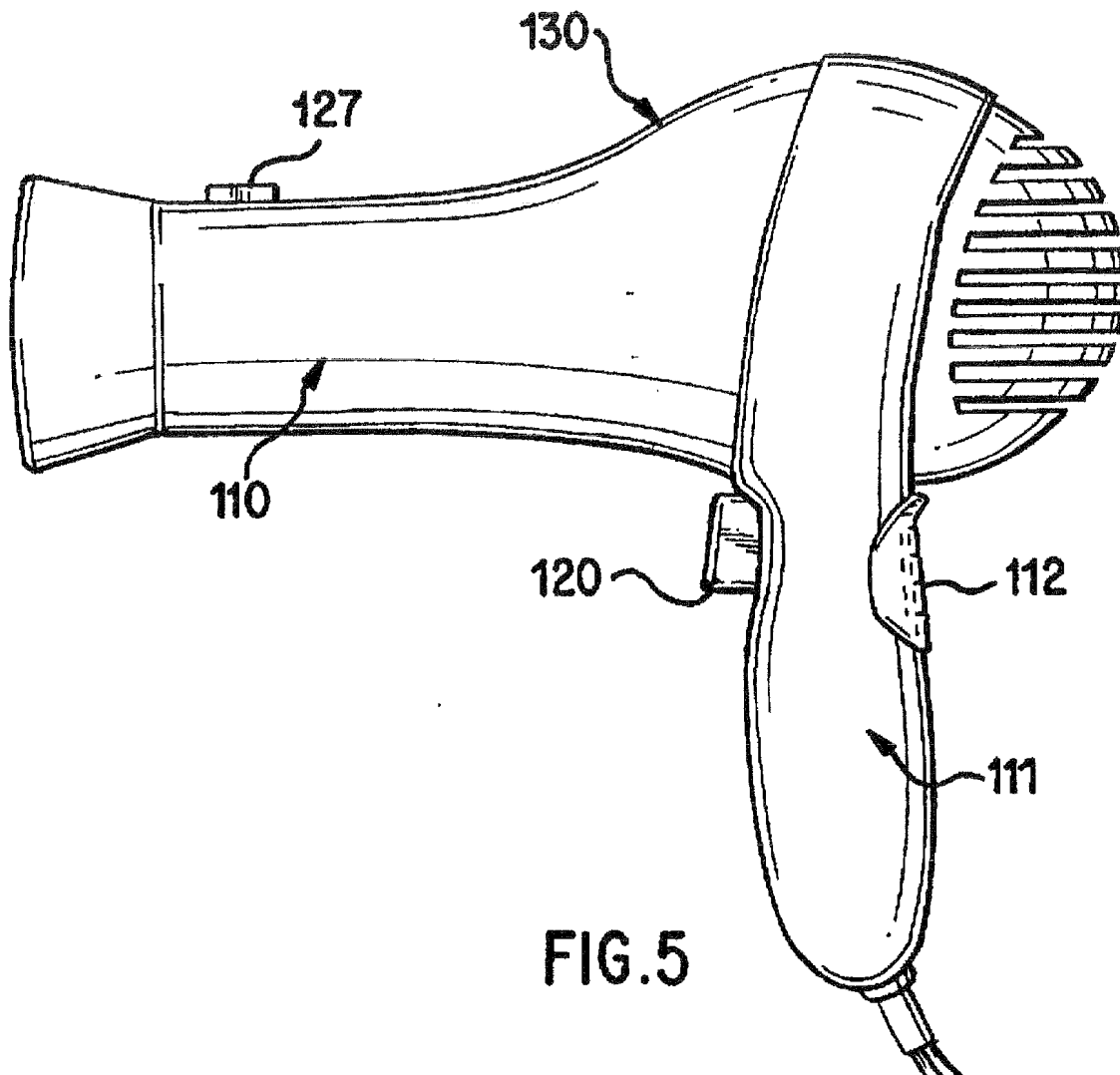
A disadvantage of the known hair dryers is that they do not allow users to control air flow rate and temperature when holding the dryer in different positions, such as by either the handle or barrel. This requires that a user switch grips in the middle of drying hair to change the air flow rate or temperature. Alternately, the hand not holding the dryer must be used to change the air flow rate or temperature. This is not practical because the user's other hand is generally performing hair styling activities.

The present invention alleviates to a great extent these disadvantages by providing a hair dryer including more than one switch to control air flow rate or temperature. Each switch is located on a different portion of the hair dryer, allowing the user to select air flow rate or temperature when gripping the dryer in different ways. This allows an operator to control air flow rate or temperature with the hand holding the dryer without requiring him to hold the dryer in a particular manner.

Thaler '331 **explicitly states** that the solution is "*providing a hair dryer including **more than one switch** to control air flow rate or temperature.*" If the rejection is maintained, Applicant respectfully requests that the Examiner articulate how Thaler '331 can be interpreted as teaching a **single** cold-air combination switch in view of Thaler's explicit teaching to the contrary.

There is no doubt with regard to the requirement for two separate switches. The collar arm in FIG. 1, which is mechanically coupled to trigger 20, is replaced by a push button 127 that performs the same function as the trigger 120. **Push button 127 is to be used when the dryer is held by the barrel 110 and trigger 120 is to be used when the dryer is held by the handle 111.** Thaler '331 leaves no room for an alternative interpretation, as asserted in the rejection.

Refer now to FIG. 5, which shows another embodiment of a hair dryer generally designated by reference numeral 130, according to the present invention. In this embodiment, the barrel 110, handle 111, power switch 112 and trigger 120 are similar to the corresponding parts of the hair dryer 30 of FIG. 1. The collar arm and collar arrangement, however, have been replaced with an electrical push button 127 located on the barrel 110. This push button 127 performs the same functions as the trigger 120. That is, both the button 127 and the trigger 120 control the hair dryer's air flow rate and/or temperature through associated electrical circuitry. Thus, the user can hold the dryer by the barrel 110, as shown in FIG. 4, and activate the button 127 with a single finger.



The invention recited in present claim 13 provides an altogether different solution to the same ergonomic problem addressed by Thaler '331. Claim 13 recites a dryer comprising a single cold air combination switch that is configured to be actuated by a single finger of a hand holding the dryer by either the barrel or the handle. Contrary to the Examiner's assertion that the claim recites "*functional language*," the invention recited in claim 13 is structurally different from the dryer taught by Thaler '331 because Thaler always requires two cold air combination switches and claim 13 recites a (i.e. single) cold air combination switch configured in such a way that a second cold air combination switch is not needed.

One of skill in the art could not reasonably interpret the language recited in claim 13 as encompassing a dryer comprising two cold air combination switches because the claim recites a single cold air combination switch.

Neither Thaler '988 nor Kaeriyama teach or suggest the claim limitation of a single cold air combination switch configured to be actuated selectively from the first or second handle grip by direct contact between switch and one finger of a hand on either the first or second handle grip. Kaeriyama explicitly teaches more than one cold air combination switch (claim 1, first and second full paragraphs on page 5).

The response to Applicant's argument in the Office Action mailed 30 March 2011 cites FIG. 5 in Thaler '331 as teaching a single cold air combination switch. The response does not address the substance of the arguments, which includes citations from Thaler '331 that directly contradict the Examiner's interpretation of FIG. 5 (see underline in text describing electric pushbutton 127 above) and the Thaler '331 dryer, the differences between Thaler's solution to an ergonomic problem and the solution provided by presently claimed invention.

III B. Applicant argues that rejected claims are patentable over the cited references because the references, neither alone nor in combination, teach or suggest a housing between a handle grip and a barrel.

The rejection relies upon the asserted teaching in Thaler '331 of a housing between a handle grip and a barrel.

Claim 13 recites hand held hair dryer comprising an electric fan located in a housing portion. The rejection cites structural element 130 in Thaler as a housing portion. Structural element 130 in FIG. 5 of Thaler is not identified in the specification of that patent. Structural element 30 is identified as the hair dryer

itself in FIG. 1. Structural element 20 in FIG. 1 is identified as a trigger switch and structural element 120 is identified as a trigger switch in FIG. 5. Accordingly, it appears that the structural element 130 in FIG. 5, which is cited as a housing portion in the rejection, actually represents the dryer and not a housing. Therefore, the rejection does not establish that Thaler '331 teaches a housing portion. The description FIG. 1 clearly indicates that the barrel portion extends to the vents (13) at the back of the barrel (10). No separate housing is shown and the electric fan is located within the barrel, not in a separate housing.

Neither Thaler '988 nor Kaeriyama teach or suggest the claim limitation of a housing between a handle grip and a barrel. Thaler '988 does not teach a housing between a handle grip and a barrel portion. Structural element 10 in Thaler '988 refers to the hair dryer and not a housing.

The response to Applicant's argument in the Office Action mailed 30 March 2011 does not address the substance of the argument, including specific references to Thaler '331 that contradict the Examiner's interpretation of the prior art and that the cited reference does teach or suggest a housing at all, let alone a housing between a handle grip and a barrel.

III C. Applicant argues that rejected claims are patentable over the cited references because the references, neither alone nor in combination, teach or suggest a cold air combination switch located only on the housing between the handle grip and the barrel.

The rejection relies upon the asserted teaching in Thaler '331 of a cold air combination switch located only on the housing between the handle grip and the barrel.

Claim 13 recites a cold air combination switch that is located only on the housing portion between the handle grip and the barrel portion of the dryer. The

trigger switches 20 and 120 taught by Thaler are located on the handle 11 (column 2, line 50, and column 3, line 66 – column 4, line 2). The second switches are located on the barrel. All of the switches taught by Thaler '988 are located on a handle grip. Kaeriyama teaches more than one switch with neither switch located on a housing located between a handle and a barrel portion.

The response to Applicant's argument in the Office Action mailed 30 March 2011 cites FIG. 1 in Thaler '331 as showing a cold air combination switch 20 located on the housing and the handle. The response asserts that it would have been obvious to move the switch from a position that overlaps the handle and the housing to a position entirely on the housing to make more room on the handle. No evidence is provided in support of the asserted motivation, which is that one would have wanted to have more room on the handle. There is no teaching or suggestion in Thaler '331 that the handle requires more space. Furthermore, the Thaler '331 dryer has more than one cold air combination switch. Moving the switch from the handle to a position on the barrel (there is no housing) can as easily be expected to make the switch more difficult to actuate from the pistol grip.

The response to Applicant's argument ignores the substance of the argument, which is based upon citations from the reference that contradict the Examiner's interpretation of Thaler '331 with respect to the presence of a housing and the location of the cold air combination switch.

Applicant argues that claims 3-6, and 9 are patentable over the cited prior art at least for the reasons provided for claim 13.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Thaler** (US 5,727,331) in view of **Thaler** (US 4,711,988), **Kaeriyama** (JP 03 009 703 A), and **Paulhus** (US 4,676,260). The rejection has been carefully considered.

IV. Applicant argues that claim 10 is patentable over the cited references at least for the reasons provided with regard to the rejection of claim 13 in arguments **III A-C** above.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Thaler** (US 5,727,331) in view of **Thaler** (US 4,711,988), **Kaeriyama** (JP 03 009 703 A), and **Gallone** (US 5,349,147). The rejection has been carefully considered.

V A. Applicant argues that claim 11 is patentable over the cited references at least for the reasons provided with regard to the rejection of claim 13 in arguments **III A-C** above.

V B. Applicant argues that claim 11 is patentable over the cited references because Gallone does not teach or suggest a cold air combination switch (16.2) that is a two-legged toggle switch. The rejection asserts cites structural element 15 in FIG. 1 of Gallone as a two-legged toggle switch. The description of structural element 15 in FIG. 1 of Gallone indicates that 15 is "*a transmission rod*" (column 3, line 25). Accordingly, Gallone does not teach or suggest a two-legged toggle switch.

V C. Applicant argues that claim 11 is patentable over the cited prior art because one of ordinary skill, at the time the invention was made, would not have been motivated to modify the hair dryer of Thaler '331 to include a toggle switch as asserted in the rejection.

Applicant argues that the examiner has not established *prima facie* obviousness for the asserted combination because the factual support for the conclusion of obviousness is lacking or incorrect. The motivation asserted for the

combination is not supported by fact and the assertion that Gallone teaches a two-legged toggle switch is not supported by the Gallone patent.

The rejection does not establish a nexus between a hair dryer taught by Thaler '331 and the switch taught by Gallone. Rather, the rejection merely presents a conclusory statement of obviousness. The rejection provides no evidence that the switch taught by Gallone is of suitable size or weight for a hand hair dryer or that splashing of water into hand hair dryer switches is an issue to be addressed in hair dryers, which are not typically used in or near water. The much larger issue of an opening drawing air into a housing and blowing heated air out of another opening much larger than the cold air combination switch would, in any event, not be splash proof. No overall advantage would have been gained by making the cold air combination switch splash-proof. Consequently, the reason provided for the asserted combination does not hold water.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Thaler** (US 5,727,331) in view of **Thaler** (US 4,711,988), **Kaeriyama** (JP 03 009 703 A), and **Berryman** (US 3,612,824). The rejection has been carefully considered.

VI A. Applicant argues that claim 12 is patentable over the cited prior art at least for the reasons described in arguments against the rejection of claim 13 in **III A-C** above.

VI B. Applicant argues that one of ordinary skill in the art, at the time the invention was made, would not have been motivated to modify the hair dryer resulting from the proposed combination of Thaler '331, Thaler '988, and Kaeriyama according to Berryman, as asserted in the rejection. Berryman, in Column 1, lines 4-18, provides background to the portable heat gun described therein. The only reference to a hair dryer is found in lines 6-10. The context of mentioning a hair dryer is the extreme differences between a hair dryer and hot

air blowers such as blowtorch heaters. All reference to the heat gun described in Berryman is to heat guns generating high "very hot" temperatures well in excess of what one would be expected to use with hair. There is certainly no teaching that any of the heat gun devices disclosed by Berryman, or a hair dryer, would have been cool enough to be held by the barrel. While the combination suggested would have been possible, one of ordinary skill in the art would not reasonably have been concerned about being burned by the dryer resulting from the combination of Thaler '331, Thaler '988, and Kaeriyama because the Thaler '331, and Kaeriyama dryers had insulated barrels and were disclosed as being holdable by their barrels. The suggested motivation of avoiding burns is therefore not reasonable motivation for a hair dryer, even if avoiding burns would have been a motivation for a heat gun producing air much hotter than that produced by a hair dryer.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Thaler** (US 5,727,331) in view of **Thaler** (US 4,711,988) and **Berryman** (US 3,612,824). The rejection has been carefully considered.

VII A. Applicant argues that claim 14 is patentable over the cited references because the references, neither alone nor in combination, teach or suggest the limitations of:

a single cold air combination switch (16, 16.1, 16.2) is located only on the housing portion (6) between said first handle grip (8) and said barrel portion (5) at the angle formed by the first handle grip (8) and the barrel portion (5) and

said cold air combination switch (16, 16.1, 16.2) is configured to be actuated selectively from the first or second handle grip (8, 9), by direct contact between the cold air combination switch and one finger of a hand on either the first handle grip (8) or the second handle grip (9);

at least for the reasons provided in **III A** above.

VII B. Applicant argues that claim 14 is patentable over the cited references because the references, neither alone nor in combination, teach or suggest a housing between a handle grip and a barrel at least for the reasons provided in **III B** above.

VII C. Applicant argues that claim 14 is patentable over the cited references because the references, neither alone nor in combination, teach or suggest a cold air combination switch located only on the housing between the handle grip and the barrel at least for the reasons provided in **III C** above.

VII D. Applicant argues that claim 14 is patentable over the cited references one of ordinary skill in the art, at the time the invention was made, would not have been motivated to modify the hair dryer resulting from the proposed combination of Thaler '331 and Thaler '988 according to Berryman, as asserted in the rejection.

Berryman, in Column 1, lines 4-18, provides background to the portable heat gun described therein. The only reference to a hair dryer is found in lines 6-10. The context of mentioning a hair dryer is the extreme differences between a hair dryer and hot air blowers such as blowtorch heaters. All reference to the heat gun described in Berryman is to heat guns generating high "very hot" temperatures well in excess of what one would be expected to use with hair. There is certainly no teaching that any of the heat gun devices disclosed by Berryman, or a hair dryer, would have been cool enough to be held by the barrel. While the combination suggested would have been possible, one of ordinary skill in the art would not reasonably have been concerned about being burned by the dryer resulting from the combination of Thaler '331 and Thaler '988 because the Thaler '331, had an insulated barrel and was disclosed as being holdable by the barrel. The suggested motivation of avoiding burns is therefore not reasonable

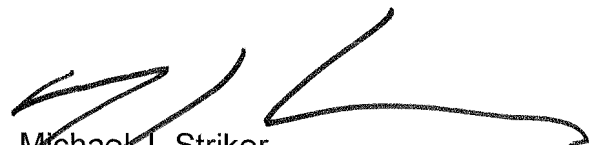
motivation for a hair dryer, even if avoiding burns would have been a motivation for a heat gun producing air much hotter than that produced by a hair dryer.

In view of the foregoing arguments, Applicant respectfully requests that the outstanding rejections of claims 3-6 and 9-14 under 35 U.S.C. 103(a) be withdrawn.

Conclusion

The application in its amended state is believed to be in condition for allowance. Action to this end is courteously solicited. Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Michael J. Striker', is written over the printed name and title.

Michael J. Striker
Attorney for Applicant
Reg. No.: 27233
103 East Neck Road
Huntington, New York 11743
631-549-4700